

Appl. No. 10/629,926
Amdt. dated 9/12/07
Reply to Office action of 6/12/07

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REMARKS/ARGUMENTS

Reconsideration of the application is requested.

A claim for priority and a certified copy of Austrian Application No. A 149/2001, dated January 30, 2001, were filed in the instant application on October 6, 2003. However, items 12)a) and 12)a)1. of the Office Action Summary do not mention those documents. Applicant would appreciate the Examiner's acknowledgement of the receipt of those documents in the next Office communication.

Claims 1-5, 8-10 and 13-27 are now in the application and are subject to examination. Claims 1 and 8 have been amended. Claims 25-27 have been added. Claims 6-7 and 11-12 have been canceled.

In "Formal Matters," the first paragraph on page 2 of the above-identified Office Action, the Examiner requested cancellation of claim 6 and a change in the dependency of claims 7 and 8. Claims 6 and 7 have been canceled and the dependency of claim 8 has been changed. In view of the second paragraph on page 2 of the Office Action, new claims 25 and 26 have been added, which are nearly identical to previously canceled claims 11 and 12, and the subject matter previously added to claim 1 has been deleted.

In "Claim Rejections – 35 USC § 102" on pages 2-4 of the Office Action, claims 1, 2, 4-10, 13-17 and 19-24 have been rejected as being fully anticipated by U.S. Patent No. 6,497,720 to Augustine et al. (hereinafter Augustine) under 35 U.S.C. § 102(e).

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In "Claim Rejections – 35 USC § 103" on page 4 of the Office Action, claim 3 has been rejected as being obvious over Augustine under 35 U.S.C. § 103(a).

The rejections have been noted and claim 1 has been amended in an effort to even more clearly define the invention of the instant application. Support for the changes to claim 1 is found in original claims 7 and 8. Additionally, new claim 27 has been added. Support for new claim 27 can be found on page 4, last paragraph and elsewhere in the Specification of the instant application.

Before discussing the prior art in detail, it is believed that a brief review of the invention as claimed, would be helpful. Claim 1 calls for, *inter alia*, a device for releasing chemical/physical parameters, the device comprising:

an applicator for flexibly applying to an entire body or body parts, said applicator being made of flexible material and having at least two layers defining a space therebetween with at least two closed chambers or channels laterally adjacent one another, each chamber or channel being independently and individually fillable with fluidic media for independently and individually releasing the chemical/physical parameters;

one of said layers being configured to face the body or body parts and being provided with openings for releasing fluidic media to the body or body parts;

a control device connected to said applicator for controlling functional parameters, including a flow volume, a temperature, and a pressure, of the medium in said space; and

sensors connected to said control device, the media in the respective chambers or channels being controlled by said control device in dependence on the body parameters detected by said sensors.

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New claim 27 states that, *inter alia*, the openings release liquid media to the body or body parts.

Accordingly, claim 1 now includes the feature of previous claim 7 relating to one of the layers being configured to face the body or parts thereof, as well as the feature of previous claim 8 relating to the openings for releasing fluidic media being formed in one of the layers.

The Augustine reference discloses a support apparatus in the form of a water or air mattress. Openings formed in a layer for releasing fluidic media are not disclosed in Augustine.

Figs. 11 and 13 (as described in column 10, lines 11 to 15) of Augustine disclose a bladder 110 made of woven fabric which may be coated or not (as described in column 9, lines 55 to 58) and may have means for discharging air which can include migration of air through a controlled weave porosity of the fabric, vents or a duct. See "mesh" 86 in Fig. 8 on the upper side of the support apparatus as well. The mesh does not constitute openings in a layer as recited in claim 1 of the instant application.

In addition to not showing openings formed in a layer for releasing fluidic media, Augustine is limited to the air cooling of a body lying thereon and only air, i.e. gaseous media, but not liquid media, as recited in claim 27 of the instant application, can be discharged.

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Augustine neither discloses nor renders obvious the release of liquid media directly to the body or parts thereof.

As already stated in a previous Response, the subject matter of Augustine relates to a water mattress (see the description of Figs. 2-4 and 6-7) which is by its nature very heavy and as a whole very inflexible. This makes it impossible to apply or lay or wrap the support apparatus onto or around a persons' body or parts thereof.

This is why the subject matter of Augustine relates to a support apparatus and not a flexible applicator to be placed onto a body or body parts.

Additionally, the subject matter of Augustine is not suitable or qualified to be used as a body applicator as defined in claim 1 of the instant application.

Moreover, Applicant respectfully believes that the Examiner's opinion that the claims of the instant application are anticipated by or obvious over Augustine are a result of *ex post facto* wisdom derived from reading Applicant's disclosure and thus impermissible hindsight.

Clearly, Augustine does not show a layer being configured to face a body or body parts and being provided with openings for releasing fluidic media to the body or body parts as recited in claim 1, nor the openings releasing liquid media to the body or body parts as recited in claim 27, of the instant application.

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It is accordingly believed to be clear that none of the references, whether taken alone or in any combination, either show or suggest the features of claims 1 and 27. Claims 1 and 27 are, therefore, believed to be patentable over the art.

The dependent claims are believed to be patentable as well because they all are ultimately dependent on claim 1.

Finally, Applicant appreciatively acknowledges the Examiner's statement on page 4 of the Office action that claim 18 "would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." In light of the above, applicants respectfully believe that rewriting of claim 18 is unnecessary at this time.

In view of the foregoing, reconsideration and allowance of claims 1-5, 8-10 and 13-27 are solicited.

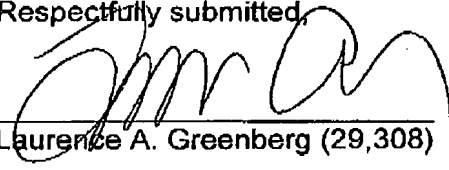
In the event the Examiner should still find any of the claims to be unpatentable, counsel would appreciate receiving a telephone call so that, if possible, patentable language can be worked out.

If an extension of time is required, petition for extension is herewith made. Any extension fee associated therewith should be charged to Deposit Account Number 12-1099 of Lerner Greenberg Sterner LLP.

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Please charge any other fees that might be due with respect to Sections 1.16 and
1.17 to Deposit Account Number 12-1099 of Lerner Greenberg Sterner LLP.

Respectfully submitted,



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LAG/vk

September 12, 2007

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